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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

SWITZERLAND

1. The Human Rights Committee considered the initial report of Switzerland (CCPR/C/81/Add.8) at its 1537th, 1538th and 1539th meetings (see CCPR/C/SR.1537-1539), on 24 and 25 October 1996, and adopted 1/ the following observations.

A. Introduction

2. The Committee expresses its satisfaction to the State party for its detailed and comprehensive initial report and wishes to emphasize the quality of that report. It thanks the delegation for having given particularly clear, detailed and frank replies to the written and oral questions it asked; this made possible a fruitful and constructive dialogue between the Committee and the delegation. The Committee thanks the State party for having transmitted to it, following the consideration of the report, written replies to the questions which the delegation was unable to answer orally.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes that there are no particular factors or difficulties that might prevent the effective implementation of the provisions of the Covenant in Switzerland, with the exception of the maintenance by Switzerland of its reservations to certain articles.

1/ At its 1557th meeting, on 7 November 1996.

C. Positive aspects

4. The Committee notes with satisfaction that the Covenant forms an integral part of the Swiss legal system, with a status higher than domestic legislation, that its provisions may be directly invoked by private individuals before the courts and that judges may refer to it directly. It notes that the Swiss courts, and notably the Federal Tribunal, have already on numerous occasions referred to the provisions of the Covenant and to the Committee's general comments.

5. The Committee welcomes the withdrawal of the reservation made by Switzerland to article 20, paragraph 2, of the Covenant and notes that the withdrawal of Switzerland's reservations to article 14, paragraphs 1, 3 (d) and (f), and 5, is currently under consideration by the Federal Council. The Committee also notes with satisfaction that the proposal for accession to the Optional Protocol is on the agenda of the Federal Assembly.

6. The Committee notes with satisfaction that the decisions of the Federal Tribunal seem to have remedied the shortcoming of article 4 of the Federal Constitution, whose non-discrimination clauses do not expressly cover all the grounds referred to in articles 2 and 26 of the Covenant.

7. The Committee welcomes the introduction, in January 1995, into the Federal Penal Code of a provision for the punishment of incitement to racial, ethnic or religious discrimination or hatred or to acts of racial, ethnic or religious discrimination, and also the statement of negationist views. It also welcomes the establishment, in September 1995, of a Federal Commission on Racism, whose work, however, started too recently for its effectiveness to be assessed.

8. The Committee welcomes the measures taken by the federal authorities to encourage and promote equality between men and women in all sectors of professional activity, in particular through the Federal Office for Equality between Men and Women and the entry into force, in July 1996, of the Federal Act relating to equality between women and men. The Committee notes with satisfaction that this Act, in particular, permits the shifting of the burden of proof, facilitates legal action by a victim of discrimination or harassment by making the procedure free of charge and provides for the possibility of rescinding a dismissal effected by way of victimization for the making of a complaint of discrimination or harassment.

9. The Committee notes with satisfaction that, although the Federal Constitution does not contain a provision concerning the guarantee of a fair trial, the Federal Tribunal has in its decisions ruled that all necessary guarantees follow from article 4 of the Constitution.

10. The Committee welcomes the entry into force of the Civilian Service Act, which has introduced a civil procedure for determining cases of conscientious objection.

D. Principal subjects of concern

11. The Committee regrets the maintenance of Switzerland's reservation to article 26 of the Covenant, which limits the applicability of the principle of the equality of all persons before the law and of the prohibition of

discrimination to only those rights which are contained in the Covenant, whereas article 26 of the Covenant, as interpreted by the Committee, extends it to every area regulated and protected by the public authorities.

12. The Committee notes with concern that in many areas, such as access to higher education, access to posts of responsibility, equal remuneration for work of equal value, and participation in household tasks and in the upbringing of children, equality between men and women has not yet been achieved in practice, particularly in the private sector.

13. The Committee is concerned at the numerous allegations of ill-treatment in the course of arrests or police custody, particularly in respect of foreign nationals or Swiss citizens of foreign origin and, in conjunction with them, reports on the authorities' failure to follow up complaints of ill-treatment by the police and the disproportionate nature, if not absence, of penalties. In this connection, the Committee notes with concern that in the various cantons independent machinery for recording and following up complaints of ill-treatment by the police does not seem to exist and that, on the contrary, complaints must in the first instance be addressed to the superior administrative authority. Furthermore, it regrets that in various cantons detainees may be held incommunicado for periods ranging from 8 to 30 days, or even for indefinite periods in some cases. It also regrets the non-existence in most cantons of legal guarantees, such as the possibility for a detainee to contact a lawyer immediately after his arrest and to be examined by an independent doctor at the commencement of police custody and before he appears before the examining magistrate. The Committee also notes that it seems very difficult in practice for most persons who have been arrested to inform their family or friends as soon as they are arrested.

14. On the question of pre-trial detention, the Committee notes with concern that it often happens that when remand prisons are full, detainees are kept, in some cases for several days, in police cells, where conditions of detention are manifestly inadequate for periods in excess of 24 hours.

15. The Committee notes with concern that the Federal Act relating to coercive measures, which entered into force in January 1995, in some cases permits the administrative detention of foreign nationals without a temporary or permanent residence permit, including asylum-seekers and minors over the age of 15, for three months while the decision on the right of temporary residence is being prepared, and for a further six months, and even one year with the agreement of the judicial authority, pending expulsion. The Committee notes that these time-limits are considerably in excess of what is necessary, particularly in the case of detention pending expulsion, and that the time-limit of 96 hours for the judicial review of the detention decision or the decision to extend detention is also excessive and discriminatory, particularly in the light of the fact that in penal matters this review is guaranteed after 24 or 48 hours depending on the canton concerned.

16. The Committee notes with concern that the obligation established in article 14, paragraph 3 (f), of the Covenant to provide an interpreter for everyone charged with a criminal offence if he cannot understand or speak the language used in court, is not reflected in the criminal legislation of all the cantons.

17. While taking note of the delegation's statement that the provision is no longer enforced, the Committee emphasizes that the Decree of the Federal Council of 1948 concerning political speeches by foreigners restricts the freedom of expression of foreigners who do not have a permanent residence permit in a manner contrary to article 19 of the Covenant.

18. The Committee also notes that family reunification is not authorized immediately for foreign workers who settle in Switzerland, but only after 18 months, which, in the Committee's view, is too long a period for the foreign worker to be separated from his family.

19. The Committee is concerned at the requirement for persons who adopt a child abroad under the regime of simple adoption to submit an application for full adoption in Switzerland if they wish the adoption to be recognized in Switzerland. This procedure makes permanent adoption subject to a two-year trial period, during which the adoptive parents may decide not to go ahead with the adoption and the child is entitled only to a temporary and renewable foreigner's residence permit. The Committee expresses its concern since these two factors make the child's position very precarious from both the legal and emotional standpoints.

20. The Committee notes that the Federal Constitution contains no provisions reflecting article 27 of the Covenant. The Committee considers that article 27 of the Covenant is not limited to the protection of the various national minorities, but concerns all ethnic, religious or linguistic minorities present on the territory of a State.

E. Suggestions and recommendations

21. The Committee suggests that the authorities should seriously consider withdrawing the reservation made by Switzerland to article 26 of the Covenant, so that the article may be implemented, in the spirit of the Covenant, as an autonomous right guaranteeing non-discrimination in all spheres regulated and protected by the State. The authorities' attention is drawn to general comment No. 18 (37) on non-discrimination and to general comment No. 24 (52) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

22. The Committee hopes that favourable consideration will be given to the possibility of acceding to the Optional Protocol to the Covenant.

23. The Committee recommends that measures should be taken by the authorities to combat discrimination against women in practice. In this connection, the Committee emphasizes the importance of educational campaigns to develop awareness of the problem of discrimination and recommends that all possible measures be taken, in particular at the social infrastructure level, to make it easier for women who wish to work outside the home to do so. The Committee also recommends that the authorities make greater efforts strictly to implement the constitutional and legislative provisions relating to equal pay for men and women for work of equal value, particularly in the private sector.

24. The Committee recommends that the discussions aimed at harmonizing the various cantonal laws on criminal procedure should be intensified, with due

respect for the provisions of the Covenant, particularly with regard to fundamental guarantees during police custody or incommunicado detention. The Committee emphasizes in particular the need to allow suspects to contact a lawyer and their family or friends, and to have suspects examined by an independent doctor as soon as they are arrested, after each period of questioning and before they are brought before the examining magistrate or released. The Committee further recommends that independent machinery, subject to public supervision, should be introduced in all cantons to receive complaints against police officers concerning ill-treatment during custody.

25. The Committee recommends that all necessary measures should be taken to ensure that accused persons are not detained for several days in police premises.

26. The Committee recommends that the Act relating to coercive measures should be implemented in a restrictive manner and in the spirit of the Covenant, so as to ensure that the length of detention applicable under the Act is as short as possible and that the judicial review of the detention decision or the decision to extend detention is carried out in less than 96 hours. The Committee also recommends that all possible measures should be taken to ensure that foreigners who are covered by this Act are informed in a language they understand of the remedies available to them and are assisted by counsel.

27. The Committee recommends that measures should be taken to bring the criminal legislation of all the cantons into conformity with article 14, paragraph 3 (f), of the Covenant.

28. The Committee recommends that the Federal Decree of 24 February 1948 concerning political speeches by foreigners should be abrogated, or amended so as to bring it into conformity with article 19 of the Covenant relating to freedom of expression.

29. The Committee also recommends that measures should be taken to permit the family reunification of foreign workers resident in Switzerland shortly after they obtain a temporary residence permit.

30. The Committee recommends that the necessary legislative measures should be taken to ensure that children who have been adopted abroad are granted, as soon as they arrive in Switzerland, either Swiss nationality if the parents are Swiss, or a temporary or permanent residence permit if the parents have such a permit, and that the two-year trial period prior to the granting of adoption should not apply to them.

31. The Committee welcomes the publication of Switzerland's report in the official languages and recommends that these concluding observations should be disseminated.